

REMARKS

Claims 1-3, 5, 7, 10, 15-17 and 20 are currently pending in this application. Claims 1, 17 and 20 have been amended for clarification of the claimed invention. The amended claims set is provided herewith.

§112 Rejections

Claims 1-3, 5, 7, 10 and 20 have been rejected as being indefinite under 35 U.S.C. 112, ¶2. As provided herein, claims 1, 17 and 20 have been amended to clarify that the Markush group corresponds to the soluble fiber component. Applicants thank the Examiner for pointing out this inadvertent language. Withdrawal of this rejection is respectfully requested.

§102(e) Rejections

Claims 1, 3, 5, 15 and 16 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S Patent No. 6,491,952 to Sjoberg.

Sjoberg indeed describes certain compositions that include either a sterol or a stanol as a cholesterol lowering component. Sjoberg's compositions (See examples) rely solely on the single component (sterol or stanol), such as β -sitosterol or β -sitostanol.

Applicants' composition includes at least one soluble fiber such as an oat or a β -glucan. There is no teaching anywhere in Sjoberg of a cholesterol lowering composition achieved by combining, for example, an oat component with, for example, a β -sitosterol or β -sitostanol. Applicants submit that Sjoberg did not recognize that a food product, such as a cereal or snack bar, can be provided with a combination of 2 components that work are complimentary in achieving effective cholesterol lowering benefits. Example 9 of Sjoberg mixes, among other things, β -sitosterol with oak flakes. However, this combination was not recognized as a mixture effected cholesterol levels due to both the sterol and the oat. Sjoberg only teaches the effect imparted by the sterol or stanol.

Absent a teaching in Sjoberg that a composition that includes at least a sterol or stanol along with a soluble fiber can provide a cholesterol lowering effect, it is improper to rely on Sjoberg as an anticipating reference against the presently claimed invention. Accordingly, withdrawal of this rejection is respectfully requested.

Vala et al.
Serial No. 09/975,615

§103 Rejection

Claims 1-3, 5, 7, 10, 15-17, and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg in view of U.S. Patent No. 6,020,324 to Jamas et al.

Sjoberg has been discussed above. Jamas relates to glucan-based additives. Merely combining the references still does not achieve Applicants' claimed invention, as neither reference would have pointed a skilled artisan to combine the Sjoberg sterol or stanol, with a Jamas-taught glucan dietary additive. In addition, as the Examiner clearly points out, neither reference recognized the healthful benefit of lowering cholesterol and or LDL levels. Thus, Applicants assert that one of ordinary skill in the art would have had neither the motivation nor expectation of success in achieving a cholesterol lowering food product as instantly claimed. It would not have been obvious to a skilled artisan that a ready to eat food product with cholesterol lowering benefits could be achieved by a composition that includes at least two components: a soluble fiber and a sterol or stanol, as instantly claimed.

Withdrawal of this rejection is respectfully requested.

Applicants respectfully request reconsideration and allowance of the claims as all rejections have been overcome. Early notice of allowability is kindly requested. Please contact the undersigned if it will assist in expediting prosecution of these claims.

Please apply any charges or refunds to Deposit Account No. 07-0900 and provide notification of such transaction(s) to the address below.

Respectfully submitted,



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